

THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MICHAEL A. FORD and NIKI FORD
Plaintiffs,

VS.

THE UNITED STATES OF AMERICA,
Defendant.

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CIVIL NO. SA 18-CV-1139

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. Now comes, MICHAEL A. FORD and NIKI FORD hereinafter referred to as Plaintiffs in the above styled and numbered cause, complaining of the UNITED STATES OF AMERICA, hereinafter referred to as Defendant, and for cause of action would respectfully show unto the Court as follows:

JURISDICTION

2. Jurisdiction in this case is founded on the Federal Tort Claims Act, Title 28 U.S.C. §1346(b), and 28 U.S.C. §1367. The amount in controversy exceeds the sum of \$100,000.00, exclusive of interest, costs, and attorney's fees.

VENUE

3. Plaintiffs, MICHAEL A. FORD and NIKI FORD are resident/citizens of Stockdale, Wilson County, Texas.

4. Each of the relevant acts complained of occurred in San Antonio, Bexar County, Texas, within the San Antonio Division of the United States District Court for the Western District of Texas.

ADMINISTRATIVE CLAIMS

5. Plaintiff, MICHAEL A. FORD, has filed his original Claim for Damages with the U.S. Department of Veterans Affairs, Houston Regional Counsel, 6900 Almeda Road, Houston, Texas, 77030-4200, which was received by the Department of Veterans Affairs on October 23, 2017. The Department of Veterans Affairs denied the Plaintiff's claim on May 4, 2018; however, the six (6) month period following the denial has not expired as of the date of the filing of the Plaintiffs' Original Complaint. Plaintiff, NIKI FORD, filed her claim for damages on April 19, 2018, which was also denied on May 4, 2018, and the six (6) month period following the denial has not expired as of the date of the filing of the Plaintiffs' Original Complaint.

SERVICE

6. Service of citation may be made upon the Defendant, UNITED STATES OF AMERICA, by serving its' agent, JOHN BASH, United States Attorney for the Western District of Texas, at his office located at 601 NW Loop 410, San Antonio, Bexar County, Texas 78216, and by sending a true and correct copy of this Complaint by Certified Mail, Return Receipt Requested, to the HONORABLE JEFF SESSIONS, Attorney General of the United States, The Department of Justice, 10th and Constitution N.W., Room B-112, Washington, D.C. 20530.

AGENCY

7. The Defendant, UNITED STATES OF AMERICA, acting by and through its' agents, servants and/or employees of the Department of Veterans Affairs, owns and operates the Audie L. Murphy Memorial Veterans Hospital located in San Antonio, Bexar County, Texas. Said facility provides healthcare services for persons such as Plaintiff, MICHAEL A. FORD.

FACTUAL BACKGROUND

8. Plaintiff, MICHAEL A. FORD, a 70 year old man who was born on October 28, 1948, was admitted to the Audie L. Murphy Memorial Veterans Hospital on April 14, 2016 to undergo an operative procedure to extract a number of his teeth in an effort to obtain clearance for a future knee replacement surgery. The Plaintiff had agreed to undergo general anesthesia for the surgical extraction of 14 carious maxillary teeth. Induction of the anesthesia began at 0737. The first attempt at nasal intubation was performed by a resident nurse anesthetists in training. This attempt ended in failure when the resident was unable to direct the tube anterior enough to enter the trachea. The second attempt was also unsuccessful when the CRNA could not advance the tube into the Plaintiff, MICHAEL A. FORD's, trachea. At this time the Plaintiff, MICHAEL A. FORD's, oxygen saturation began to fall. Four (4) more attempts to intubate the Plaintiff were made by a supervising anesthesiologist over a prolonged period of time before the ETT was eventually successful with a positive ETCO₂ and bilateral breath sounds. In the meantime, the Plaintiff, MICHAEL A. FORD, had developed bradycardia which had deteriorated into V fib, followed by a bradycardia arrest. A Code Blue and chest compressions was initiated. After at least 7 minutes of chest compressions, circulation was re-established, but the Plaintiff remained unresponsive. The Plaintiff was transferred to the ICU where it was observed that he was unable to follow commands, and was demonstrating upper extremity extensor or posturing and myoclonus. The Plaintiff remained intubated until April 18, 2016, when he finally demonstrated he was able to follow simple commands. An EEG which had been obtained following the Plaintiffs' resuscitation was read as abnormal. The impression of the Neurologist/Epileptologist was that the Plaintiff had sustained a severe diffuse nonspecific cerebral brain injury from a period of prolonged hypoxia.

NEGLIGENT ACTS AND/OR OMISSIONS

9. Plaintiffs, MICHAEL A. FORD and NIKI FORD would show that the Defendant, UNITED STATES OF AMERICA, acting by and through its agents, servants and/or employees at the Audie L. Murphy Memorial Veterans Hospital, was negligent in the healthcare and treatment of MICHAEL A. FORD, and that such negligence was a direct and proximate cause of the injuries and damages suffered by the Plaintiffs herein. Such negligent acts and/or omissions include, but are not limited to the following:

- (A) Failure to timely and correctly perform nasal intubation on patient, MICHAEL A. FORD;
- (B) Failure to properly and timely diagnose and treat MICHAEL A. FORD's developing bradycardia;
- (C) Failure to timely call a Code Blue and timely treat MICHAEL A. FORD's bradycardic arrest; and
- (D) Failing to act as physicians and healthcare providers of ordinary prudence would have acted under the same or similar circumstances.

10. Each and all of the above foregoing acts of the Defendant, both of omission and commission, were negligent and constituted negligence, and each and all were a proximate cause of the injuries and damages sustained by the Plaintiffs herein.

DAMAGES

11. As a result of the negligence of the physicians and staff at the Audie L. Murphy Memorial Veterans Hospital, as set out herein, Plaintiff, MICHAEL A. FORD, has been caused to suffer physical pain, mental anguish, physical impairment, and physical disfigurement in the past, and will, in reasonable medical probability, continue to sustain these injuries in the future. Additionally, the Plaintiff has incurred reasonable medical, hospital, and therapy expenses in the past, and will, in reasonable medical probability, continue to incur these expenses in the future.

Additionally, the Plaintiff has incurred a loss of income and a loss of household services in the past, and will, in reasonable probability, continue to sustain these losses in the future.

12. As a result of the negligence of the physicians and staff at the Audie L. Murphy Memorial Veterans Hospital, Plaintiff NIKI FORD, has sustained a loss of consortium and the loss of household services in the past, and will, in reasonable probability, continue to sustain these losses in the future as a result of the injuries sustained to her husband, Plaintiff MICHAEL A. FORD.

DAMAGE LIMITATIONS

13. Plaintiff believes and alleges that the damages caused by the negligent acts of omissions and/or commissions of the Defendant have injured the Plaintiffs in an amount within the jurisdictional limits of this Court.

14. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant herein be duly cited to appear and answer herein, and that upon final hearing of this suit, Plaintiffs have and recover judgment from the Defendant, in an amount within the jurisdictional limits of this Court, together with post-judgment interest as allowed by law, plus reasonable costs of Court, and for such other and further relief, both general and special, in law and equity, to which the Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

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BY:



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